

LFC Requester:	Christina Keyes
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**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original ☐ Amendment ☐
Correction ☐ Substitute ☒

Date 2/3/2016
Bill No: SJR 2

Sponsor: Sen. Michael Padilla
Short Title: PERMANENT FUNDS FOR
CHILDHOOD EDUCATION, CA

Agency Code: 305
Person Writing AAG James Torres
Phone: 827-6047 Email jtorres@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with:
SJR 17

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

SJR 2 proposes amending Article XII, Section 7 of the New Mexico Constitution to require an additional annual distribution from the permanent school fund of 1 percent of the average year-end value of the preceding 5 years of that fund. This annual distribution will commence in the first fiscal year following the effective date of the amendment proposed by this resolution, and in each of the nine immediately subsequent fiscal years. This increased distribution is only made if the year-end market values of the fund for the preceding 5 years is at least \$10,000,000,000. This additional funding is designated for "early childhood education services" administered by the state, which this resolution defines as nonsectarian services for children until eligible for kindergarten provided through a "school district, a charter school, a state contractor, an entity of an Indian nation, tribe or pueblo, the New Mexico school for the blind and visually impaired or the New Mexico school for the deaf; provided that early childhood education services available from the New Mexico school for the blind and visually impaired or the New Mexico school for the deaf shall not be delivered by a state contractor."

The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

Section 3 states that this amendment would only become effective with the consent of the United States Congress.

SIGNIFICANT ISSUES

Both the Section 8 of the Enabling Act of 1910 and Article XII, Section 3 of the New Mexico Constitution prohibit use of land grant permanent funds for any sectarian or private school and require that schools receiving such funds must remain under the exclusive control of the state. Section 7 of the Enabling Act further states that the permanent school fund of the state "shall be used for the maintenance of the common schools of the State." See Andrus v. Utah, 446 U.S. 500, 506 ("common schools" are synonymous with "public schools"). Therefore, the use of land grant permanent funds is limited to the support and maintenance of public schools. An act of the United States Congress and amendments to Article XII, Sections 3 and 7, as well as NMSA 1978 Section 19-1-17, may be required to fund entities other than the public schools.

Under the Senate Rules Committee (SRC) substitute for SJR 2, “state contractor” is added to the list of beneficiaries of land grant permanent funds. NMSA 1978 Section 22-1-2(K) defines a “private school” as one that “is not under the control, supervision or management of a local school board”. Early educational services provided by state contractors may be considered outside the scope of Section 8 of the Enabling Act and Art. XII, Section 3 of the state constitution because SJR 2 does not make clear that the contractors are providing services on behalf of public schools controlled by the state.

SJR 2’s amendments to the distribution of funds do not require the consent of the United States Congress because Section 10 of the Enabling Act provides that “[d]istributions from the [land grant permanent funds] shall be made as provided in Article 12, Section 7 of the Constitution of New Mexico.” See also N.M. Attorney General Opinion No. 12-03 (2012).

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflict with SJR 17, which would amend Article XII, Section 7 of the constitution to require an additional 1 percent fund disbursement for the increase in the minimum instructional hours and days in a school year as provided by law.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A